

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WILLIAM C. SHAW,

Petitioner,

vs.

DIRECTOR WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS,

Respondent.

NO. CV-09-174-LRS

ORDER GRANTING DEFENDANT'S MOTION  
TO DISMISS WITHOUT PREJUDICE

Petitioner William Shaw is under the Washington Department of Corrections' supervision pursuant to a 2008 conviction by plea of third degree assault and two counts of communication with a minor for immoral purposes, committed on May 26, 2007. Exhibit 1. On August 19, 2008, Shaw filed a personal restraint petition ("PRP") with the Washington Supreme Court. Exhibit 2; Exhibit 3. In that petition, he claimed his attorney at the guilty plea hearing, Robert Cossey, provided ineffective assistance of counsel by inducing Shaw to plead guilty based on a false promise that doing so would not affect Shaw's previously filed personal restraint petition involving speedy trial issues. Exhibits 2 & 3. The court subsequently transferred the petition to the Washington Court of Appeals, which consolidated it with a direct appeal that Shaw was pursuing regarding unrelated

1 sentencing matters. Exhibit 4. The court has yet to rule in that  
2 consolidated case.

3       Petitioner brought this *pro se* Petition for Writ of Habeas Corpus  
4 pursuant to 28 U.S.C. § 2241 on June 5, 2009. On August 3, 2009,  
5 Petitioner filed an Amended Petition for relief under 28 U.S.C. § 2254  
6 (Ct. Rec. 5), as directed by the court in its order dated June 12,  
7 2009 (Ct. Rec. 4). The U.S. Marshal Service served the Amended  
8 Petition on Defendant on October 7, 2009 (Ct. Recs. 9, 10).  
9 Thereafter, Petitioner has filed several motions, although he has  
10 received deficiency notices from the court based on his failure to  
11 properly note said motions. On December 10, 2009, Respondent, Jerome  
12 Taylor, filed a Motion to Dismiss Without Prejudice Pending Conclusion  
13 of State Court Proceedings," Ct. Rec. 20, and noted this hearing  
14 without oral argument for January 29, 2010.

15       Respondent moves to dismiss Petitioner's habeas petition without  
16 prejudice pending the outcome of his state court PRP (which is  
17 consolidated with his direct appeal). Respondent urges that this  
18 court should dismiss this petition because if the state court grants  
19 Mr. Shaw's petition, the first part of his two-part federal habeas  
20 claim will be moot.

21       Although Mr. Shaw has filed several unnoted motions following  
22 Respondent's motion to dismiss, he has not directly responded to  
23 Respondent's motion, and more specifically, why this court should not  
24 dismiss his petition without prejudice pending the state court  
25 proceedings.

26       This court finds that Mr. Shaw's habeas claim is not yet ripe.  
27

1 Mr. Shaw's federal habeas petition claims ineffective assistance by  
2 two of his attorneys: Cossey and Rearden. Mr. Shaw's pending  
3 consolidated state case (Washington Court of Appeals Case No. 28214-7-  
4 III) claims ineffective assistance of his attorney Cossey based on the  
5 same facts as his habeas claim before this court. If the Washington  
6 Court of Appeals grants Mr. Shaw's petition, the part of his federal  
7 habeas petition involving Cossey will be moot (assuming the Washington  
8 Supreme Court either grants review and affirms, or denies review).  
9 This court concludes that Petitioner's habeas claim is not ripe for  
10 adjudication in a federal habeas proceeding because he has not  
11 finished his state court appellate process with regard to the claim.  
12 Out of respect for the state court process and judicial economy, this  
13 court will dismiss Petitioner's habeas petition without prejudice.

14 For the reasons explained above, **IT IS HEREBY ORDERED:**

15 1. Defendant's Motion to Dismiss Without Prejudice Pending  
16 Conclusion of State Court Proceedings, **Ct. Rec. 20**, is **GRANTED**.  
17 Petitioner's habeas petition (Ct. Rec. 3) and amended habeas petition  
18 (Ct. Rec. 5) are **dismissed without prejudice**.

19 2. Petitioner's Motion for Hearing, **Ct. Rec. 6**, is **DENIED as**  
20 **MOOT**.

21 3. Petitioner's Motion for Release Pending Review, **Ct. Rec. 11**,  
22 is **DENIED**.

23 3. Petitioner's Motion to Appoint Expert, **Ct. Rec. 12**, is  
24 **DENIED**.

25 4. Respondent's Motion for Extension of Time to File Answer, **Ct.**  
26 **Rec. 15**, is **DENIED as MOOT**.

5. Petitioner's Motion for Hearing, Ct. Rec. 23, is **DENIED as MOOT.**

6. Petitioner's Motion for Hearing, Ct. Rec. 28, is **DENIED as MOOT.**

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order, enter judgment consistent with this order, and forward a copy of this order to Petitioner and counsel of record.

**DATED** this 1st day of March, 2010.

*s/Lonny R. Suko*

LONNY R. SUKO  
 CHIEF UNITED STATES DISTRICT JUDGE